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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

13 Cr. 616 VB

5 ROBERT LUSTYIK, JOHANNES
6 THALER and RIZVE AHMED,

7 Defendants.
-----x

8 September 17, 2013
9 2:10 p.m.
10 White Plains, N.Y.

Before:

HON. VINCENT L. BRICCETTI,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

BENJAMIN ALLEE

EMILY RAE WOODS

17 Assistant United States Attorneys

18 RAYMOND A. MANSOLILLO

19 Attorney for Defendant Lustyik

BRAD L. HENRY

20 Attorney for Defendant Ahmed

21 FEDERAL DEFENDERS UNIT

22 Attorney for Defendant Thaler

JASON SER

24 LEO BARRIOS, Pretrial Services

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SOUTHERN DISTRICT REPORTERS, P.C.
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1 THE COURTROOM DEPUTY: United States v. Robert
2 Lustyik, Johannes Thaler and Rizve Ahmed. Will counsel please
3 note their appearances for the record.

4 MR. ALLEE: Benjamin Allee for the government. With me
5 is Rae Woods from Public Integrity of the Department of
6 Justice.

7 MS WOODS: Good afternoon, your Honor.

8 MR. MANSOLILLO: Raymond Mansolillo for Mr. Lustyik.

9 MR. SER: Jason Ser for Mr. Thaler.

10 MR. HENRY: Brad Henry for Mr. Ahmed.

11 THE COURT: Welcome, everybody, have a seat.
12 Mr. Mansolillo, I believe I approved your application to be
13 admitted *pro hac vice* for this case and so welcome to my
14 courtroom.

15 MR. MANSOLILLO: Thank you, your Honor.

16 THE COURT: We have a number of things to do today.
17 This is Mr. Lustyik's first appearance before me on indictment
18 13 Cr. 616. I do not believe he's been arraigned yet, is that
19 correct, Mr.~Allee?

20 MR. ALLEE: Correct. This is his first appearance and
21 his arraignment.

22 THE COURT: Have you received a copy of indictment
23 13 Cr. 616?

24 DEFENDANT LUSTYIK: Yes, sir.

25 THE COURT: Have you reviewed it?

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1 DEFENDANT LUSTYIK: Yes.

2 THE COURT: Have you discussed it with your attorney.

3 DEFENDANT LUSTYIK: Yes, I have.

4 THE COURT: Would you like me to read it aloud to you
5 or do you waive a public reading?

6 DEFENDANT LUSTYIK: I'll waive a public reading.

7 THE COURT: How do you plead to the indictment?

8 DEFENDANT LUSTYIK: Not guilty.

9 THE COURT: A not guilty plea will be entered.

10 When we were here the last time, which was August 28th
11 for a number of issues which we discussed, one of them was that
12 the government had submitted to the Court a proposed
13 confidentiality order, it's actually entitled protective order.
14 And I believe, correct me if I'm wrong, that on behalf of
15 Mr. Thaler, Mr. Ser had consented to the entry of that order.
16 Is that right, Mr. Ser?

17 MR. SER: Correct, your Honor.

18 THE COURT: As far as Mr. Ahmed is concerned,
19 Mr. Blanch had just come into the case at that point and I
20 think he wanted to review it further before he told me what his
21 position was. What's your position?

22 MR. HENRY: I and Mr. Blanch have reviewed the
23 protective order. We would consent at this time.

24 THE COURT: Finally as to Mr. Lustyik, I had been told
25 back on August 28 that Mr. Mansolillo, who wasn't in the case

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1 yet at that point, objected to the order. I think that's what
2 I was told. But I just decided to hold off on deciding whether
3 to enter it or not pending Mr. Lustyik's arrival here in court
4 and also his attorney's appearance.

5 So Mr. Mansolillo, the question to you is, have you
6 had an opportunity to review the protective order, proposed
7 protective order which was enclosed in the government letter
8 dated August 21, 2013?

9 MR. MANSOLILLO: Yes, I have, your Honor. I believe
10 that there's been a modified one that was handed to us today as
11 well.

12 THE COURT: I haven't seen that. Is that true?

13 MR. ALLEE: Your Honor, yes. Mr. Henry pointed out
14 two typos.

15 THE COURT: Mr. Henry?

16 MR. ALLEE: Counsel for Mr. Ahmed. We looked at what
17 he submitted. He's correct. We fixed the two typos. I handed
18 those to counsel moments before we began and I'm prepared to
19 hand it to the Court.

20 THE COURT: Hand that up, please. Did you review
21 that?

22 MR. MANSOLILLO: Yes. And I talked to Mr. Ser,
23 counsel for Mr. Thaler. Even though I believe there's some
24 serious shortcomings on this, I'm going to consent to it now so
25 Mr. Ser and the rest of counsel can get discovery moving for

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1 them. I thank you for holding it for me. I would just like
2 the Court to know that I've gone through this in a collateral
3 case and there's a very likely possibility, good possibility
4 that I'll ask for modifications in this as we go forward, if
5 that's okay with the Court.

6 THE COURT: You can ask and we'll see. But as far as
7 I'm concerned, at least for now, you're consenting to the entry
8 of the order in its current form.

9 MR. MANSOLILLO: Yes, your Honor.

10 THE COURT: I'll go ahead and sign the proposed order
11 dated today, September 17, 2013. That will get posted on ECF.

12 I want to talk about discovery, but first of all,
13 Mr. Ahmed had been detained by Judge Yanthis back in August,
14 again I don't have the exact date in front of me, but I know it
15 was in August. August 2nd, 2013.

16 MR. ALLEE: Yes, your Honor.

17 THE COURT: He was represented by CJA counsel at that
18 time. And I received a one-page motion signed by Mr. Henry
19 dated September 9, a motion for revocation of the magistrate
20 judge's detention order. Basically you're seeking to appeal
21 the magistrate judge's detention order. But that's all I have.
22 You didn't submit any other letter or support for that, right?

23 MR. HENRY: No, your Honor. We were hoping to do just
24 brief oral argument on the motion today.

25 THE COURT: That's what I want to do now. And I did

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1 receive a Pretrial Services report from Mr. Barrios who is here
2 in the courtroom dated today. Does Mr. Henry have a copy of
3 this?

4 MR. BARRIOS: Yes, he does.

5 THE COURT: Have you had a chance to review --
6 Mr. Mansolillo, I'm dealing with Mr. Henry at this time.

7 MR. MANSOLILLO: I'm sorry.

8 THE COURT: We're just dealing with one thing at a
9 time. You'll have every opportunity to say whatever you want.

10 MR. MANSOLILLO: I thought you were --

11 THE COURT: No, no, just Mr. Henry and Mr. Ahmed. So
12 my question to you is, have you reviewed the September 17, 2013
13 Pretrial Services report, discussed it with your client.

14 MR. HENRY: I have reviewed it and discussed it, your
15 Honor.

16 THE COURT: I note in the report that the Pretrial
17 Services agency recommends that the defendant be released on
18 certain conditions and so forth. You may be heard at this time
19 and of course I'll hear from the government as well.

20 MR. HENRY: I think at the previous detention hearing
21 there were a couple of issues that were raised by the
22 government that gave the magistrate judge some pause in
23 releasing Mr. Ahmed. A few of those can be addressed fairly
24 briefly.

25 One. Obviously, the question here under 3142 is

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1 whether Mr. Ahmed is a flight risk, and the flight risk,
2 whether it can be suppressed through conditions on him for
3 release. The Probation Office recommends obviously some
4 monetary bond in addition to co-signing, pretrial supervision,
5 curfew and surrender of his passport among other things. His
6 mother and brother are present in court today. I've spoken to
7 them about the opportunity to be a third-party custodian under
8 3142. They both consent and would allow him to live at his
9 parents' home where his mother, father and brother, all three
10 live. So I've discussed with them the importance of that and
11 their obligations to report Mr. Ahmed if he was to do something
12 that he is not supposed to be doing under those conditions of
13 release.

14 THE COURT: But address for me what Judge Yanthis
15 focused on. I've read the transcript. I assume you have that
16 as well, the transcript of that hearing?

17 MR. HENRY: Correct. So I think one of the issues was
18 Mr. Ahmed having lied about traveling to Bangladesh. And so I
19 have Mr. Ahmed's passport, we're prepared to turn that in today
20 as well. But when you look at the passport, there are a number
21 of stamps which are entry stamps in the back of the passport.
22 There are a number to Heathrow International Airport and then
23 return flights to New York City. And I can't tell which
24 airport in New York City it is but in any event, he traveled to
25 England and back.

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1 There is another stamp. It is a visa and it says: No
2 visa required to travel to Bangladesh. Because Mr. Ahmed was
3 born in Bangladesh, he is entitled to have that stamp and to
4 travel there freely. However, that stamp is not a stamp, to
5 the best of my knowledge, that he would have received by going
6 to Bangladesh. I have the benefit of having traveled overseas
7 just a week ago and have been familiarizing myself with these
8 things for better or worse. But it looks like this is a stamp
9 he receives because of his birthright to be present and travel
10 to Bangladesh, not that he actually went to Bangladesh.

11 THE COURT: Let me just interrupt you. I appreciate
12 what you're saying but I read the transcript and counsel for
13 Mr. Ahmed at the time made the same point. And I don't think
14 that the government disagreed with that. Or do you disagree
15 with that, the narrow point, which is that this stamp is in
16 effect permission for him to go to Bangladesh but it doesn't
17 show that he's been there recently?

18 MR. ALLEE: We don't disagree with that. At the
19 hearing before Judge Yanthis we took the defendant at his word
20 when he represented that to Mr. Barrios.

21 THE COURT: What else do you have?

22 MR. HENRY: Then you look at he had a ticket to
23 travel, it would have been shortly after his arrest, to London.
24 And so he had been planning to leave prior to his arrest. The
25 Court will note, however, that it was a roundtrip ticket. So

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1 he had the intention to travel there and travel back. He had
2 traveled to England on a number of occasions as evidenced by
3 looking at the back of his passport and subsequently returned
4 to New York.

5 In addition to that, Mr. Ahmed had a job interview
6 scheduled on August 23rd with a technological company that's
7 located in Virginia, so he was planning on returning for the
8 job opportunity.

9 In addition to that, he relates to me that he had made
10 plans to get together with a friend, her name is Emily Coalin,
11 on August 16th. This is evidenced through some Facebook
12 discussions between he and her.

13 So he had made plans to travel but he had also made
14 plans for his return. It was not that he was trying to leave
15 the area or flee these particular charges.

16 THE COURT: How many times has he been to London? I
17 know you're saying that he had made plans to travel. Obviously
18 he didn't travel. But in the five years prior to his arrest,
19 how many times had he been to London? There was something
20 about that in the Pretrial Services report.

21 MR. HENRY: I believe three times he's traveled to
22 England over the last five years. I see stamps in the passport
23 for the 10th of July 2012, 15th of January 2013, and the 15th
24 of March, 2013. Those are entry stamps from Heathrow
25 International Airport.

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1 THE COURT: Why was he going to the United Kingdom so
2 frequently? That's three times in less than a year. It's not
3 illegal to travel to the UK, but I'm curious as to why.

4 MR. HENRY: He has friends and family there, your
5 Honor, that he goes and visits fairly often. I think one of
6 the other issues that maybe was a point of contention at the
7 previous hearing was the amount of money that Mr. Ahmed had
8 access to. Mr. Ahmed was an employee at Macy's in the shoe
9 department and so obviously he wasn't making large amounts of
10 money doing that. His family, while they do have some means,
11 are certainly not wealthy. They do have some property that
12 certainly they are willing to put up for purposes of bond as
13 well as some cash that they are willing to present to the Court
14 through family and friends, and some, certainly, unsecured
15 bond. And we have a list of a number of people, six family
16 members, and five individual family friends, who are willing to
17 sign Mr. Ahmed's bond. Some of them have cash to provide.
18 Some of them would be unsecured bond signers, but they would be
19 willing to do that.

20 THE COURT: What about this question? I've read, I
21 don't pretend to be intimately familiar with the charges in
22 this case, but from reviewing the transcript of the bail
23 hearing -- before I say that, yes, he does have family
24 connections in Bangladesh which is hardly surprising since
25 that's where he was born. He is a U.S. citizen. But the one

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1 thing in here that is a little bit troubling, if I can find it,
2 hold on a second. Okay, this is Mr. Allee's statement at page
3 15 of the transcript. He was talking about the allegations
4 that Mr. Ahmed was attempting to obtain information about a
5 political rival in Bangladesh. That may or may not be so. I
6 don't know. That's the allegation. Mr. Allee says: Clearly
7 part of the purpose as alleged is to discredit this person, and
8 we have evidence that Ahmed's purpose was to publicize this
9 information in newspapers in Bangladesh. And the way I look at
10 it is, it may well be criminal, the way in which Mr. Ahmed is
11 alleged to have attempted to obtain the information. But using
12 information that's been obtained to discredit political rivals,
13 that's certainly something that gets done in the United States
14 a lot as well, it's not something limited to Bangladesh.

15 But the next paragraph is the sentence that is
16 troubling. We have further evidence including Mr. Ahmed's own
17 admission that he was considering and contemplating, far worse,
18 kidnapping this person or bringing physical harm to this
19 person, which gives rise to the danger that I mentioned. What
20 about that? I'm not putting words in Mr. Allee's mouth because
21 they're already on paper. I assume he'd say the same thing
22 again.

23 MR. HENRY: I understand. Certainly my client would
24 deny those allegations vehemently. I haven't seen the
25 discovery so I don't know the answer to that question. Maybe

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1 we can be enlightened on that particular point. But to that
2 end, the charges in this case as they stand are not violent
3 charges.

4 THE COURT: Serious. By definition. We're in federal
5 court, 30 foot ceiling. It's serious.

6 MR. HENRY: It's serious. But there's a distinction
7 between serious and violent, important distinction. There is
8 no allegation that he has actually engaged in any violent
9 conduct in his life for that matter. And then the Court has to
10 look at, in these bail applications, that he is innocent of all
11 of those allegations. So when looking at the interplay of 3142
12 and the factors the Court has to consider, there have been
13 courts that have opined that the allegations of the offense are
14 the least important points that the Court must consider when
15 looking at these.

16 THE COURT: But in this case, the government doesn't
17 even have that, right? The allegations of this offense do not
18 include allegations of violence or attempted violence or
19 conspiracy to commit violent crimes.

20 MR. HENRY: There are no allegations like that in this
21 case, your Honor. Certainly Mr. Ahmed would deny any such
22 allegation. He has been, throughout his entire life,
23 especially his adult life, not in trouble, has not caused any
24 harm to anyone and has not threatened anyone in this case. And
25 so we would say that I don't think that that is a factor that

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1 can't, one, be taken care of through pretrial conditions of
2 release, but is probably in fact not a true problem with
3 Mr. Ahmed.

4 THE COURT: I also see, and again, I apologize if I'm
5 not as familiar with the details as the lawyers in the case
6 are, but just looking at the indictment, I noted that the time
7 frame of the conspiracy is September, the alleged conspiracy is
8 September '11 through in or about March of 2012. That's
9 roughly a six-month period. And there are a number of overt
10 acts that are alleged the last one of which is March 12, 2012.
11 And then in the substantive counts, actually the only
12 substantive count against Mr. Ahmed is Count 3, I think that's
13 right.

14 MR. HENRY: I believe that's correct.

15 THE COURT: It says again from September 2011 through
16 March 2012 he did certain things. When you jump to Count 4 it
17 also refers to that same time period, conspiracy to defraud
18 citizens of the United States. Count 5, theft of government
19 property. It doesn't involve any allegations of Mr. Ahmed.
20 Count 6, receiving stolen property, again is the same time
21 frame as is the unauthorized disclosure of suspicious activity
22 report, that's only charged against Mr. Lustyik.

23 What jumped out at me is that the allegations of the
24 indictment on their face are about a year and a half prior to
25 when the defendants, in particular Mr. Ahmed, were arrested.

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1 So there's nothing in the indictment about, I'm not saying that
2 there's no evidence the government has but at least there's
3 nothing in the indictment that I can see relating to anything
4 that Mr. Ahmed did in connection with this matter subsequent to
5 March of 2012.

6 MR. HENRY: I believe that's correct, your Honor.
7 During that period from 2012 to his arrest he was traveling in
8 and out of the country but always returned which I think goes
9 to the point that --

10 THE COURT: All right. Anything further?

11 MR. HENRY: I don't believe so, your Honor. Other
12 than he does have tremendous family support. I do have a list
13 of individuals who are willing to put up money. The pretrial
14 report reflects that there is a townhouse, an apartment worth
15 approximately \$244,000 but about 55,000 of that his mother and
16 father own which they're willing to sign over as a property
17 bond.

18 THE COURT: Where is that located?

19 MR. HENRY: It's in Connecticut, your Honor.

20 THE COURT: Where in Connecticut?

21 MR. HENRY: Danbury, Connecticut. Other than that, I
22 believe that's all I have.

23 THE COURT: Mr. Allee or Ms Woods, either one of you?

24 MR. ALLEE: It's me, your Honor, thank you.

25 THE COURT: Are you going to let Ms Woods say

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1 anything? You didn't let her say anything the last time. I
2 don't even know what her voice sounds like. I'm kidding. Go
3 ahead, Mr. Allee.

4 MR. ALLEE: I'm sure she can say all this better than
5 me but I'm sorry, your Honor, you're stuck with me for this
6 argument. As was Judge Yanthis who found rightly in the
7 government's view that Mr. Ahmed is a flight risk. He also
8 found him to be a danger, I believe.

9 THE COURT: I read that already. I can review it, I
10 give great, I rely greatly on what magistrate judges do in
11 these bail matters, but I can review this *de novo*. And assume
12 for the moment that I am reviewing this *de novo*, how is the
13 fact that Mr. Ahmed traveled apparently for completely legal
14 and legitimate reasons to London on a U.S. passport which is a
15 legitimate passport because he is a U.S. citizen, like tens of
16 others of naturalized citizens he has a U.S. passport, he's
17 allowed to travel to the United Kingdom which he's done, he's
18 also allowed to travel to Bangladesh, he hasn't done that
19 recently. You say he has contacts there which doesn't surprise
20 me because he's from there. He came here to the United States
21 as a child according to the Pretrial Services report, so he's
22 lived here for 20 plus years. So under those circumstances,
23 and when you add in the fact that he's got all these folks
24 willing to support him and put up their property and co-sign a
25 bond, let's deal with the risk of flight before we deal with

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1 danger to the community, but what is it about the facts of this
2 case that should lead me to decide that there are no conditions
3 or combination of conditions that would reasonably assure his
4 appearance? Only I don't really see that honestly, I don't
5 really see that. The danger to the community is a different
6 question. Risk of flight, what do you got? The fact that he
7 has contacts in Bangladesh? Okay. As I say, maybe a hundred
8 million Americans, I don't know how many naturalized U.S.
9 citizens there are, but there's a lot of them.

10 MR. ALLEE: To put it into the context of 3142,
11 Mr. Ahmed is unlike folks who merely traveled to London three
12 times in the last year or who have substantial ties to another
13 country. The first is, when you look at the nature and
14 circumstances of the charges here, Mr. Ahmed is charged with
15 very serious offenses, he's looking at very serious time.

16 THE COURT: I get that. Have you ever prosecuted a
17 case in this courtroom where the charges were not serious and
18 did not carry with them serious penalties if convicted? If
19 that were the standard for deciding risk of flight then
20 everyone would be locked up. And I don't think the Bail Reform
21 Act, the key word being reform, says that. I think it's just
22 the opposite. I think that the message there is that courts
23 should be inclined to release people on bail even when the
24 charges are serious. There are some presumptions and things
25 that apply in certain cases, none of which apply here, right?

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1 MR. ALLEE: There's no presumptions here, your Honor.
2 The government's view is not that any one of these factors
3 actually by itself would necessarily be enough. We haven't
4 fought so hard about that, whether the charges alone or the
5 ties would be enough. This is a defendant when you go through
6 the whole picture, when you go through the factors enumerated
7 in 3142, is a substantial and real flight risk when you add all
8 these things together.

9 Yes, in this courthouse many defendants are charged
10 with serious charges.

11 THE COURT: All defendants are. I got that. What
12 else do you have on risk of night?

13 MR. ALLEE: Strength of the evidence.

14 THE COURT: Let's assume that you got a rock solid
15 case, and in most cases the government does have a solid case.
16 I know that from 30 years practicing as a criminal lawyer,
17 usually the government has a very strong case. What else have
18 you got? Strong case and serious case. That's the vast
19 majority of the cases in this courthouse and in this courtroom.

20 MR. ALLEE: I'll move to the next factor. Those are
21 not small things.

22 THE COURT: They're not small but they exist in
23 virtually every case. That's what I'm trying to do, I'm trying
24 to see what do you have in addition to things that apply in
25 every case, because if that was enough then no one would get

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1 bail.

2 MR. ALLEE: Understood, your Honor. I'm hesitant to
3 bypass those important factors. Many defendants in this
4 courthouse are detained. To be like other defendants in this
5 case is not exonerating or is not a grounds to be released.

6 THE COURT: A lot of those people that are detained,
7 Congress has decided that there is a presumption against
8 release. Congress has not said that in this case. Putting it
9 another way, although the Bail Reform Act doesn't say it, there
10 is a presumption that you should be released even when there
11 are serious charges and the evidence is not strong. How can I
12 possibly conclude that the evidence is not strong. I'm not
13 going to try the case at the time of the bail hearing. I'm
14 going to assume for purposes of this discussion that you have a
15 very strong case, very high likelihood that you're going to
16 convict Mr. Ahmed, and that the charges that you brought are
17 very serious and carry very long prison terms. I'm assuming
18 all of that. What else do you have?

19 MR. ALLEE: You look at the history and
20 characteristics of the defendant. First, he was arrested on
21 August 2nd. He had a plane ticket on August 3rd to London.
22 The evidence in the case includes --

23 THE COURT: It was a roundtrip ticket. That kind of
24 cuts against the implication that you want me to draw or the
25 inference you want me to draw, which is that he knew he was

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1 under investigation, I think you said that at the bail hearing,
2 he knew he was under investigation and lo and behold, he got a
3 ticket to London, which is true. And he got a return ticket
4 also.

5 MR. ALLEE: There's no dispute about the return
6 ticket. I think that requires some explaining. The evidence
7 in the case includes that there were at least two aims of
8 Mr. Ahmed in seeking to bribe Mr. Lustyik and his accomplice
9 Thaler. One was to assist someone Ahmed viewed as an ally, as
10 a political ally in Bangladesh. There's a two party system,
11 there's allegations of corruption tossed from one party to the
12 other.

13 THE COURT: Sounds like the United States to me. Keep
14 going.

15 MR. ALLEE: In some ways that's pretty familiar, of
16 course. Let me start actually with the rival and then I'll
17 return to the ally. One purpose Mr. Ahmed had, in describing
18 the evidence, is that a rival or someone on the other side
19 Mr. Ahmed sought to discredit. And I want to start there
20 because you mentioned that that was something that came up at
21 the argument we had before Judge Yanthis. That is, by
22 comparison to the other purpose Ahmed had for that rival, which
23 was to hurt or kidnap that person, which Mr. Ahmed admitted to
24 when he was arrested to the arresting agents with the
25 Department of Justice Inspector General's Office, that is a

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more benign purpose, to discredit him than to hurt him. He had both those purposes. I don't want to glide by that either. This wasn't just sort of muckraking or sort of ordinary political battle. This was to bribe a agent to discredit someone. So this was a criminal method to achieve that purpose.

Another purpose Mr. Ahmed had was to assist a political ally. This was someone who at the time was living in London --

THE COURT: I think I tried to make clear before, and let me just state for the record I'm not suggesting for one second that although it might be okay to discredit a political opponent, that might be okay, we do that all the time, it's certainly not okay to bribe a federal agent to obtain the information which you're going to then use to discredit a political opponent. I don't want to suggest for one second that I think otherwise. Obviously that's a very serious matter.

MR. ALLEE: This is my long answer on London which I'll try to come to the point. Yes, he had a return ticket. But London is not a place of insignificance in terms of the evidence in this case. Because his other purpose was to get the help of Mr. Lustyik to interfere with an investigation and with the execution of a pending arrest warrant for an individual who was in London who was an ally of Mr. Ahmed who

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1 was on the other side of that political divide.

2 So there's evidence in the case regarding Ahmed's aim,
3 regarding his efforts to get help from Mr. Lustik in that
4 regard, to learn information about a pending warrant, to learn
5 who had the warrant, to learn the sources of the investigation,
6 or the agencies involved in the investigation that led to the
7 issuance of that warrant. Those are all part of the evidence
8 in the case, part of the efforts Mr. Ahmed made to assist this
9 person.

10 This person is also not someone who is insignificant
11 in terms of this argument because the ally of Mr. Ahmed happens
12 to be -- the warrant, I should say, for the ally of Mr. Ahmed
13 had to do with a terrorist act, with a grenade attack in 2004
14 at a political rally in Bangladesh. And so Mr. Ahmed's going
15 to London, whether or not he intended to return or had a return
16 ticket which might demonstrate an intent to return is not
17 something that can be offered as a bail argument. At the very
18 least, he's going to the place where the target or the point of
19 his criminal conspiracy resided, someone he was trying to help,
20 someone who was potentially very dangerous. The fact that he
21 had gone there three times before just makes that something
22 that is of more concern.

23 Now the story doesn't actually end there. You pointed
24 out that the charges actually stop in March 2012, and that's
25 right, and certainly the voluminous text messages among the

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1 participants to the crime show that this kind of petered out.

2 Ahmed wasn't coming up with the money he promised, the 30,000 a
3 month he just hadn't produced that. And so Lustyik and Thaler
4 and Ahmed just sort of ceased going forward with their
5 conspiracy. But that didn't affect Ahmed's efforts in either
6 of these fronts. Assisting the ally or harm the rival. And so
7 there is proof that the conduct continued into 2013, the
8 conduct being Ahmed's efforts to harm and to assist.

9 And so the London trip, it's not a year and a half
10 passes of nothing. A year and a half passed during which Ahmed
11 engaged in these efforts to get more information about the
12 rival to discredit him or worse and to assist the ally.

13 Relatedly, and a source of that proof of later efforts
14 by Ahmed post March 2012, is Ahmed's iPhone and relatedly we
15 found some troubling documents on that iPhone, even since the
16 argument we had before Judge Yantthis, and I have a copy I can
17 hand up. But what's apparent is that Mr. Ahmed was creating
18 false identifications to give the appearance that he was an
19 agent with the FBI including credentials, purported
20 credentials, of course he's not an agent with the FBI, and that
21 these are things we found when we arrested him, that's August
22 2nd of 2013. I'd like to hand up a copy of just some of the
23 selected fake credentials and fake documents that we found.

24 THE COURT: Does Mr. Henry have this?

25 MR. ALLEE: Yes, your Honor.

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1 MR. HENRY: I do.

2 THE COURT: Who would think that this was legit if he
3 misspelled the name of the agency?

4 MR. ALLEE: It's clear that these are drafts. The
5 fourth page of the attachment is getting closer to a passable
6 document. It's certainly -- the government is concerned about
7 these documents being on his phone a day before he's traveling
8 abroad.

9 THE COURT: There's other misspellings on this page as
10 well, the fourth page.

11 MR. ALLEE: Yes, your Honor.

12 THE COURT: This is troubling, don't get me wrong, but
13 it's also kind of ridiculous.

14 MR. ALLEE: Maybe if this was all we knew this would
15 be ridiculous. You have a business card that says you're an
16 undercover agent in Houston, but you have 26 Federal Plaza, the
17 address here, and other things, like misspellings. But that's
18 not the only thing we know. We know this is somebody who
19 succeeded in bribing an FBI agent to get a SAR and to get an
20 FBI electronic communication. So this is somebody who should
21 be taken seriously, even if he's got some draft documents on
22 his phone when he knows he's being investigated.

23 THE COURT: When you say draft documents on his phone,
24 you mean these were attached to some e-mail or something? In
25 what form were they on the phone? Obviously they're not in

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1 paper form if they're on his phone.

2 MR. ALLEE: I'm actually not positive I can fully
3 answer the question. We did a forensic examination of the
4 phone and found these iterations on there. I don't know
5 actually whether they were attached to anything or whether
6 they're just in there. Phones are now somewhat like computers
7 so they can have documents in all kinds of ways other than the
8 documents were attached to communications. I can get a fuller
9 answer on that, your Honor, if I get a little time after this
10 proceeding.

11 That is in the context of the history and
12 characteristics of the defendant. So he's leaving for London.
13 London is a place of serious importance here. London is where
14 the person who is wanted on the warrant that Mr. Ahmed is
15 seeking to help is residing and while there's a pending warrant
16 for that person, where Ahmed's ally is.

17 THE COURT: From where, warrant from a U.S. court?

18 MR. ALLEE: No, your Honor.

19 THE COURT: So a warrant from where?

20 MR. ALLEE: The most I can say about it now is it's an
21 international warrant not issued by a United States court.

22 There are several things I want to emphasize about
23 Mr. Ahmed's ties abroad and his comparative lack of ties here,
24 again recognizing, because you pointed out, people have ties
25 abroad. Maybe each by themselves doesn't carry the day, but

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1 certainly it would lead to government to think that if he walks
2 out of this courthouse he's just going to keep going. He's
3 born in Bangladesh. He has family in Bangladesh including his
4 uncles. There are supporters and associates of his who are in
5 Bangladesh. There's evidence that Mr. Ahmed is not the money
6 man, he's gathering money to pay bribes to Lustyik, and to do
7 so he has associates and supporters in Bangladesh in those
8 efforts. He has ties there and folks in Bangladesh who have
9 access to cash. Here he has comparatively fewer ties. He is a
10 citizen, and he's been here for 20 years, since he was 14 years
11 old. He's 34 years old now. And he's been employed for the
12 last 15 months. But before that he was unemployed for three
13 years. He's got no children here. He's got no financial ties
14 here. He's got nothing tying him down here at all.

15 His mother, who I understand is being offered as a
16 co-signer, was the woman who answered the door when we arrested
17 Mr. Ahmed. I'm repeating myself from what you read before
18 Judge Yanthis. They asked if Mr. Ahmed was there and she said
19 no, he's not here, and what's all this about. That's not a
20 good start --

21 THE COURT: No, you're right, it's not.

22 MR. ALLEE: -- from a person who you could be asking
23 to vouch for this person to return to court. The defendant's
24 father, there is some evidence that he was a participant in
25 communications that Ahmed had about getting these documents

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1 from Lustyik, from Lustyik through Thaler. Let me be clear,
2 he's not charged with a crime. But he's someone who is in the
3 know potentially of the criminal conduct here. Certainly these
4 are folks who abided this criminal conduct before Mr. Ahmed was
5 charged.

6 One other point, because I just wanted to address
7 something about cash, I'm sorry, two other points but maybe I
8 should address the first, because you asked. The stamps was
9 not a big issue. The stamps in the passport was not an issue
10 that was a determinative one at the argument before Judge
11 Yanthis. We took Mr. Ahmed at his word that he had not been to
12 Bangladesh. That seemed inconsistent with that stamp. But we
13 were in court. Mr. Barrios further inquired, doing his job,
14 and we relied on the representation that he's not been to
15 Bangladesh. That wasn't a factor in that outcome.

16 And we agree that Mr. Ahmed may not have the cash or
17 resources himself to not return to court when he's facing
18 serious charges, guidelines range of 70 months or potentially
19 more. But the evidence shows that he has access to folks who
20 do have the means to facilitate his fleeing. So we are firmly
21 of the view that he's a very serious flight risk. He is not
22 just somebody just charged with serious crimes, somebody who
23 just has ties abroad. These things come together such that we
24 would expect him to go to Bangladesh if he's released during
25 the pendency of this case.

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1 THE COURT: You actually think he would leave the
2 country and go to Bangladesh without a passport?

3 MR. ALLEE: Yes. Of course a useful measure for
4 somebody who is released is that we get their passport and
5 that's helpful. But this is someone with access to others.
6 This is someone engaged in a subterfuge. Some of the documents
7 I submitted you can laugh at, but this is someone who has gone
8 a lot further than the average defendant in creating a fake
9 credential.

10 THE COURT: Is there any evidence that he used the
11 fake credential?

12 MR. ALLEE: No, there's not.

13 THE COURT: If there was, he'd be indicted.

14 MR. ALLEE: There is evidence that he represented
15 himself as an insider in attempting to sell information that he
16 was attempting to seek by bribes.

17 THE COURT: He hasn't been charged with possessing
18 this as a crime. Is it a crime to possess these documents if
19 you don't use them or try to use them?

20 MR. ALLEE: My answer right now is it depends. I'm
21 sorry I can't give you a clear answer. I handed up those
22 because they're easy to see, but there are other items on the
23 phone. He clearly understood the difference or was attuned to
24 the difference between classified and not classified documents,
25 which others in this room will know quite a bit about, so he

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had other drafts of documents on his phone that had top secret stamps or were classified and was engaged in other efforts to doctor up documents, to give them an appearance that they were actual FBI classified documents when in fact they were not. Those are separate and apart from the ones that were sold in the criminal conspiracy that's charged. Separate documents, I mean. They may have been part of the same conspiracy.

Yes, your Honor, the government is very concerned about his being a flight risk. He certainly has the motive, the means and the opportunity to flee if he's given that chance by the Court.

THE COURT: Mr. Henry, anything further?

I'm sorry, Mr. Allee, is there anything further you want to say?

MR. ALLEE: May I just have one moment, your Honor?

THE COURT: Sure.

(Pause)

MR. ALLEE: No, your Honor, thank you.

THE COURT: Mr. Henry.

MR. HENRY: Very briefly, your Honor. Assuming all these things are true, which I don't necessarily think that we can, because a lot of those are issues --

THE COURT: You're not suggesting that Mr. Allee made up the fact that these documents were on his iPhone. They're bizarre because they're so obviously fake but I don't have

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1 documents like that on my phone. Do you? This is pretty
2 unusual for somebody to do that. It sounds like he might be a
3 fraudster or a con man. You can't deny that these things
4 exist.

5 MR. HENRY: They exist, your Honor. There's no
6 denying that. In what context they exist, were they his
7 documents or did someone else doctor those documents up and
8 e-mail to Mr. Ahmed. They are were sitting there in an e-mail
9 box. He had no intention to use them. We don't know the
10 answer to that question. There is no proof that he used them
11 or intended to use them for any purpose. I think more
12 importantly --

13 THE COURT: The fact that he had them is some evidence
14 that he intended to use them because why else would you have
15 them? Just for fun because you like the colors? People have
16 stuff because they think it might be useful for them, whether
17 it's contraband or anything else like that matter. You have
18 things in your phone like other people's e-mail addresses, why?
19 Because you might send them an e-mail. Why would you have
20 this? Because you might want to use it to defraud someone into
21 thinking you're a member of the Federal Bureau of
22 Investigations, plural. I think we only have one Federal
23 Bureau of Investigation.

24 MR. HENRY: Alternatively, your Honor, counter to your
25 argument. It's just like people have baseball cards where they

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1 have them because they make them feel good. He may have wanted
2 to feel like he was involved in this, whatever. There could
3 have been a lot of reasons besides the fact that he was going
4 to go out and use them for some illicit purpose.

5 Moving beyond all of the facts, there are conditions
6 of release that are sufficient to allow Mr. Ahmed out on
7 release. One, turning in the passport. Then how do you travel
8 out of the country? I don't think there are allegations that
9 he was involved other than with the two co-defendants sitting
10 in this courtroom now with any of this illicit activity other
11 than with people who are outside the country. He hasn't
12 traveled to Bangladesh in something like more than five years.
13 If he was so concerned with their politics and what they were
14 doing over there, why didn't he go to Bangladesh. He hasn't
15 been there in such a significant amount of time that it's sort
16 of unbelievable to think that he would up and go especially
17 without a passport or the means to get there. What are they
18 going to do? Put him in a container, put him on a ship and
19 ship him over there? I don't know how gets there without a
20 passport. He's got a lot of people willing to put up a lot of
21 money on his behalf.

22 THE COURT: How much money or property? And when I
23 say property I mean equity, not total market value. What's the
24 value of property and cash or other security that people would
25 be willing to post?

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1 MR. HENRY: His uncle is willing to post 50,000. His
2 aunt is willing to post 25,000. His sister is willing to post
3 another 25,000. His mother it willing to put up 50,000. His
4 father an additional 50,000. His brother is willing to sign
5 for 100,000.

6 THE COURT: I'm talking about putting up actual
7 security, which means cash or property. That's with regard to
8 the numbers that you just said.

9 MR. HENRY: His uncle would be willing to come up with
10 20,000 in cash. His brother would have 20 to 25,000 in cash.
11 And his father would be willing to come up with approximately
12 50,000 in cash. That is in addition to the condo which they
13 are willing to sign over a bond on, which the mortgage on the
14 house is \$210,000 but there is \$55,000 approximately of equity
15 in that property. So altogether, it's pretty close to \$150,000
16 in actual property. And then you have in addition to the
17 people that were willing to sign an unsecured bond, there are
18 five family friends who are willing to sign an unsecured
19 \$25,000 bond apiece.

20 THE COURT: Okay. Anything else that you want to say
21 in response to Mr. Allee?

22 MR. HENRY: I don't think so, your Honor. Like I
23 said, I think there are conditions that are sufficient to have
24 him released and he will appear in court as needed through the
25 duration of the case. The other consideration is, practically

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1 speaking, the two co-defendants have a case in Utah. We talked
2 about this at the last hearing. There is no telling how long
3 this case may go. There is obviously a ton of discovery, there
4 may be issues with getting security clearance for some of those
5 things which is going to take a considerable amount of time
6 that is running against the clock that is not Mr. Ahmed's
7 fault. That's just things we have to go through to make sure
8 we're able to represent fully and see the evidence in this case
9 to move forward. So there's going to be a considerable amount
10 of time. So he runs the risk of, if he is detained, being in
11 detention for quite a serious amount of time on this case. I
12 would leave the Court with that and ask that he be allowed to
13 be released on conditions.

14 THE COURT: All right. As these cases often are, it's
15 not black and white. There are a number of factors that favor
16 releasing the defendant on bail among which are that he is a
17 U.S. citizen, naturalized citizen, lived in the United States
18 for 20 years. How long has he lived in the New York area?

19 MR. HENRY: 1994 until 1999, and then 2004 to 2007 he
20 lived in New York. And he was living in Connecticut at the
21 time.

22 THE COURT: When he wasn't living in Connecticut or
23 New York, was he living anywhere else?

24 MR. HENRY: No.

25 THE COURT: Just Connecticut and New York.

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1 MR. HENRY: I think it reflects he lived in Texas with
2 his wife for a couple of years.

3 THE COURT: So basically he's lived in the New York
4 area for approximately most of the last 20 years, is that what
5 you're telling me?

6 MR. HENRY: Yes.

7 THE COURT: And I'm told that his parents and his
8 brother are U.S. citizens as well. He's had from what I'm told
9 a somewhat sketchy employment record but he has at least
10 immediately prior to when he was arrested he was gainfully
11 employed. I'm not aware of any evidence of drug use.
12 Importantly, there's no allegation of violence here, there's no
13 allegation of sale or possession of drugs. He has no prior
14 record. That's another factor that obviously cuts in his
15 favor. I don't think he's ever been arrested, am I right about
16 that, Mr. Allee?

17 MR. ALLEE: I think that's right.

18 THE COURT: I really am not moved at all by the fact
19 that he's traveled to London. People can travel to London. I
20 have been to London. I hope I wouldn't be considered a bail
21 risk. I've been there numerous times and I have friends there
22 and I have contacts overseas, as do many other people. But
23 having contacts overseas is really not very meaningful. The
24 government has said that the subject of a warrant not issued by
25 the United States, but a person who is the subject of a warrant

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1 is in London, so maybe there's some contact between Mr. Ahmed
2 and this person. It's a little bit vague. It's a couple of
3 steps removed from concrete information as far as I'm
4 concerned. Mr. Ahmed isn't charged with any crime in
5 connection with that.

6 I also think it is relevant that the case that's
7 charged here involves conduct that ended a year and a half
8 prior to, approximately a year and a half prior to when he was
9 charged. It's not as if it was an ongoing thing. He was in
10 the middle of trying to, he was caught red-handed so to speak
11 handing over the cash in return for some information he was not
12 entitled to get. This is a very serious crime but if proven it
13 occurred some years ago and it does not involve allegations
14 that Mr. Ahmed was involved in it in the recent past.

15 I have great respect for Judge Yantthis. Let me just
16 say one other thing. I am troubled by these documents and I
17 tell you, on their face they're plainly bogus. But it's
18 strange that someone would have these documents. And for what
19 reason? But even on that point, he hasn't been charged with
20 anything in connection with that. When I asked the government
21 if this is a crime merely to possess them, I think the
22 government honestly told me it depends or they're not sure, but
23 you didn't tell me that it is a crime and he hasn't been
24 charged with a crime in connection with possession of these
25 documents, the ones that appear to be false FBI identification

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1 for Mr. Ahmed. They are troubling.

2 And as I said, I have a lot of respect for Judge
3 Yanthis. But I think this is a case where given the fact that
4 there is no presumption against bail -- to put it another way,
5 I should really be presuming that the defendant is bailable.
6 Maybe that's not quite right, maybe there's not a presumption
7 of bail, but I should not assume that he's not bailable, that's
8 for sure. The only question then is and the key question is
9 whether there are conditions that would reasonably assure the
10 appearance of the defendant and the safety of the community.
11 Because let's face it, every case is a serious case. Certainly
12 in this courthouse virtually every case is a very serious case,
13 with very serious and long-term consequences if you're
14 convicted. I'm sorry if I'm jumping around a little bit, only
15 because I'm looking at my notes.

16 The fact that he had a ticket to London I think is
17 somewhat, to the extent that suggests some desire to flee, that
18 inference is blunted I think by the fact that had a return
19 ticket as well and that he's been to London a lot recently
20 which suggests that goes to London a lot. Ironically, if he
21 hadn't been to London a lot recently, then the fact that he got
22 a ticket right after he was approached by the FBI in connection
23 with this investigation would have a more nefarious connotation
24 to it. But he's been there repeatedly then that wold suggest,
25 well, he just goes to London a lot like a lot of people do. So

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1 I'm not really offended by that.

2 Getting back to the conditions that would reasonably
3 assure the appearance of the defendant and the safety of the
4 community, I think there are conditions that would reasonably
5 assure those things somewhat more substantially than was
6 represented by Mr. Barrios. I don't think he's had the
7 information that I have been provided with today.

8 I'm inclined to impose a \$500,000 personal
9 recognizance bond secured by \$200,000 of cash security. That
10 could include cash. It could also include real property where
11 there's evidence that the real property has a particular value,
12 a particular equity. So just providing an appraisal saying
13 it's worth \$250,000 without also providing mortgage documents
14 and current up-to-date statements as to what's owed in terms of
15 principal is not good enough. You have to establish that the
16 combination of cash and the equity in the house is at least
17 \$200,000. But in any event, the house is going to have to be
18 posted even if there's additional cash that's out there because
19 I'm also going to require that both parents co-sign the bond,
20 that his brother co-sign the bond as well. I want them to
21 have, you might say, some skin in the game here. Are his
22 parents here in court today?

23 MR. HENRY: His mother is.

24 THE COURT: I want her to know that if she co-signs
25 the bond and posts the house as security and Mr. Ahmed's bail

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1 is revoked for some reason there's a very serious risk, in fact
2 a likelihood that her home will be taken away from her, she
3 will be rendered homeless in that sense. That's how it should
4 be. Because that would imply that she would provide a certain
5 amount of moral suasion over her son to come to court and see
6 this thing through, come to court when he's supposed to and
7 comply with all the conditions of release. So the house has to
8 be posted. But it's going to be part of the \$200,000 cash or
9 security, with a \$500,000 bond, co-signed by the father, mother
10 and the brother.

11 You said there were other people that would be willing
12 to co-sign the bond. Are there other financially responsible
13 people that would be willing to co-sign a \$500,000 bond? That
14 doesn't mean they have 500,000 in cash lying around. But
15 people who have legitimate jobs and pay their taxes and aren't
16 convicted felons, those types of people.

17 MR. HENRY: I believe there are additional people who
18 would be willing to sign the bond.

19 THE COURT: Who are they, friends or relatives?

20 MR. HENRY: Relatives.

21 THE COURT: I'm going to require a total of five
22 co-signers. You'll work with Mr. Allee in terms of
23 establishing their financially responsible status. Three of
24 them have to be the mother, the brother and the father,
25 however. They have to be co-signers.

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In addition, there will be strict Pretrial Service supervision with home detention. Mr. Barrios had recommended a curfew, which is sort of one step less than stringent home detention, but I'm going to require home detention with electronic monitoring, and where the defendant can leave his home only for attorney visits during regular business hours, visits to court, visits to Pretrial Services, and medical visits. But for any of those things that I just mentioned, he would have to provide at least, he'd have to provide notice at least two business days prior to when he intends to leave for any of those reasons that I've just stated to Mr. Barrios at the Pretrial Services agency. If for some reason there's something else he wants to do other than those very limited things that I mentioned, he's got to get permission from me because that would be a modification of bail. And you're making a mistake to ask me, oh, my client would like to go to his niece's wedding in Milwaukee tomorrow. First of all, the more you wait before you ask me for something like that the much less likely it is that I would grant it. And my inclination is to be, impose pretty rigid conditions here because I do want to make sure that he shows up in court and that he's not a danger to the community. All these things I've mentioned so far tend to support that, including the home detention. He's got to surrender his passport. I understand that Mr. Henry actually has physical custody of his passport.

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1 That has to be surrendered. There have to be no new
2 applications for travel documents. Mr. Henry, your office is
3 in Manhattan, is that correct?

4 MR. HENRY: That's correct, your Honor.

5 THE COURT: So the defendant is permitted to travel so
6 long as he's doing it for those very limited purposes that I've
7 just described to the Southern and Eastern Districts of New
8 York and also the District of Connecticut. He would have to
9 live at his parents' home. Was he not living there at the time
10 of his arrest or is that where he was living at the time of his
11 arrest?

12 MR. HENRY: He was living there at the time of his
13 arrest.

14 THE COURT: Is it 99 Park Avenue, Unit B, Danbury,
15 Connecticut, 06810?

16 MR. HENRY: That's correct, your Honor.

17 THE COURT: That's where he's going to have to live
18 and that's where he will be subject to home detention. There
19 were no positive drug tests in this case, right, Mr. Barrios?

20 MR. BARRIOS: No, your Honor.

21 THE COURT: So you don't need drug-testing, is that
22 right?

23 MR. BARRIOS: No, your Honor.

24 THE COURT: Just give me one second.

25 (Pause)

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1 THE COURT: And the defendant is not to be released
2 until all of the conditions I've stated are satisfied. He's
3 not getting out today. All these things have to be taken care
4 of. You may have to work with Mr. Allee, who is a reasonable
5 person. He may not like the result but I'm sure he'll
6 cooperate with you in terms of the co-signers and the paperwork
7 and so forth. It's tedious to have to put all of this
8 together, but you just have to do it.

9 Mr. Ahmed, if I get word of you doing anything that is
10 the least bit problematic, and what does that mean, well,
11 contacting witnesses directly, that doesn't mean that you can't
12 prepare for trial, but the way you do it is you have your
13 lawyer or some investigator working with your lawyer or another
14 lawyer working with your lawyer attempt to do witness
15 interviews or otherwise investigate the case. If I get the
16 sense that you're engaging with potential witnesses on you're
17 thinking about taking a trip somewhere, or you do something
18 that's akin to these ridiculous documents that apparently were
19 on your phone, your bail is going to be revoked in a New York
20 second. That's how quickly it's going to happen.

21 I give you a break and I take into consideration the
22 fact that this case may go on for a while. The period that
23 this case is going to be pending is going to be the shortest
24 possible time that I can do under the circumstances, but it is
25 a circumstances here that there's already a case pending in the

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1 District of Utah involving Mr. Ahmed's co-defendants, and I
2 just don't know how exactly that's going to affect the schedule
3 here. But I know it's going to affect it to some extent. I
4 just know it.

5 I am concerned that there would be an inordinate
6 period of time that this defendant will be in custody that does
7 not involve allegations of violence, in the indictment that is,
8 or drug-dealing or any of that type of thing where often times
9 people need to be locked up to prevent danger to the community.
10 I think these conditions will reasonably insure that the
11 community is safe, people in foreign countries are safe, and
12 that the defendant will appear in court as required for all the
13 reasons that I've stated.

14 So that's my ruling on Mr. Ahmed's bail application.
15 To the extent it involves overruling Judge Yanthis then Judge
16 Yanthis is overruled.

17 All right. Moving right along. Mr. Mansolillo.

18 MR. MANSOLILLO: Yes, your Honor.

19 THE COURT: I'm not sure whether you're that familiar
20 with the practices in the Southern District, particularly the
21 ways in which lawyers communicate with each other and with the
22 Court. I'm going to assume that you're not that familiar with
23 it because otherwise I would have given you a real, as we said
24 around my chambers, a real pep talk about this piece of
25 correspondence that I received a couple of weeks ago, last

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1 week, September 9th. I don't even know if Mr. Allee has it.

2 It's a piece of paper that has your name on the top
3 with a phone number and it says faxed to me from you, with a
4 message. The message says: "Please pass this along to Judge
5 Briccetti and his clerk. Thank you, Raymond Mansolillo, Esq."
6 It doesn't indicate whether it was copied to the government.

7 Mr. Allee, did you receive a copy of this document,
8 this fax? Attached to it is an e-mail dated September 9th from
9 Mr. Mansolillo to Mr. Allee. Talking about scheduling in this
10 case.

11 MR. ALLEE: Yes, I received an e-mail.

12 THE COURT: I'm not talking about the e-mail. I'm
13 talking about the fax to me?

14 MR. ALLEE: Let me be clear. The first answer is no,
15 I didn't see a copy literally of a fax. I have gotten some
16 e-mails from Mr. Mansolillo.

17 THE COURT: Stop right there. You've answered my
18 question.

19 MR. ALLEE: One said fax in the subject line, faxed to
20 Judge Briccetti, so maybe I've seen it.

21 THE COURT: It's ironic. One of the things that
22 Mr. Mansolillo complained about to Mr. Allee -- and I never
23 want to see correspondence between lawyers again. If you do it
24 again I'm just throwing it in the circular file and that's the
25 end of it. I didn't do it with this one because I'm giving you

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1 a break. But it is ironic in your e-mail you complain that
2 Mr. Allee had *ex parte* communications with the Court. So now
3 you're, you're not just talking about Mr. Allee, because you're
4 talking about me. It would be wrong for him to have *ex parte*
5 communications with the Court and it would be wrong for me to
6 have *ex parte* communications with him.

7 Let the record reflect there are no *ex parte*
8 communications in this case. There have been none, there will
9 be none. We had a court appearance a few weeks ago at which
10 some dates were set. Because you weren't here and your client
11 wasn't here and the co-defendants in this case were gracious
12 enough to wait for you to get here, we didn't make any
13 decisions. We thought we should have everybody here before I
14 start making decisions. There has never been an *ex parte*
15 communication and there never will be one. When lawyers write
16 letters to the Court, first of all, it's on letterhead, because
17 all members of the bar have letterhead, and it has a subject
18 line with the name of the case, the docket number, which this
19 just says faxed to Judge Briccetti to you, pass it along.
20 There's not even a mention of the name of the case. I have a
21 crack staff who figured out what the case is this related to.

22 That's preposterous. You want to send me a letter,
23 it's on letterhead, with a subject line with the name of the
24 case with the docket number, it's addressed to me, the first
25 line is I represent so and so, and that applies to every letter

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1 that you send in this case from this date forward. Don't
2 assume I will remember who you are. Don't say things like as
3 the Court will recall. Assume that the Court remembers
4 nothing, which is actually not true, but you assume it. Say
5 who you are, what you want, why you want it and the extent to
6 which you've discussed it with your adversary and particularly
7 if there's been a consent. You don't have to get consent from
8 everybody, but tell me if there is consent. Don't send me
9 copies of correspondence between you and another attorney who
10 appears in front of me on this case unless it's necessary to
11 attach it to some exhibit to some motion or something. If you
12 were making a discovery motion you might want to attach, for
13 example, Mr. Allee's letter to you enclosing certain discovery
14 so I would know what you've received. That's okay. But this
15 kind of thing is completely not okay. So don't ever do it
16 again. Is that clear?

17 MR. MANSOLILLO: Your Honor, I understand your
18 admonishment. I would like to respond.

19 THE COURT: Is that clear?

20 MR. MANSOLILLO: Yes, it is.

21 THE COURT: You can respond.

22 MR. MANSOLILLO: This case has a long history.

23 THE COURT: My case doesn't have a long history. The
24 case has been in front of me once.

25 MR. MANSOLILLO: We had the same problem happen in

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1 Utah where prosecutors, in that case DOJ, contacting the court,
2 saying --

3 THE COURT: Are you saying that anyone at the
4 prosecution table or anyone associated with the prosecution had
5 an *ex parte* communication with me?

6 MR. MANSOLILLO: Not with you.

7 THE COURT: I'm glad you're not not saying that.

8 MR. MANSOLILLO: Contacted the clerks, must have
9 implied that I would be there the 12th, I was traveling. I
10 told him in several communications that I could not be there
11 the 12th. I could be there on any day you wanted. This
12 happened on several occasions in Utah. It's very expensive
13 going back and forth when not one of these clients has ever
14 stepped foot in Utah. That case should have been brought here
15 with this case. And I had to contact the chief, with all
16 three, judge there and all I ask is that the scheduling comes
17 from the court, not the prosecutor.

18 THE COURT: The scheduled in this case came from the
19 court. We had a conference in open court in this very
20 courtroom. You weren't here, neither was your client.
21 Parenthetically, I was told that your client refused to appear
22 for arraignment by video conference which he certainly had the
23 right to do in which case he would not have been transported
24 two-thirds of the way across the country for this purpose. But
25 he has the right to refuse so I don't hold that against him in

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any way, shape or form. But we had a conference because the case has to get moving. And we set dates at that conference that I set because I thought they were appropriate dates.

I don't specifically recall what Mr. Allee said. Obviously, Mr. Allee didn't tell me that you could absolutely not be here on September 12th. What I asked Mr. Allee at that conference was, and you're certainly welcome to get a transcript, this may not be exact words, but the gist of it was: Mr. Allee, when do you anticipate Mr. Lustyik arriving in the district and therefore being available for an arraignment? And he said he reasonably thought it would be the first week of September. Because the process was already starting at that point. And I said: All right, why don't we do this. Why don't we set a conference down for the second week of September. That was my idea.

And there are other lawyers here and other defendants and we all came to the conclusion that September 12th was the right day. I hope it's not the case that Mr. Allee knew prior to that conference in open court, not *ex parte* communication but conference in open court, that you absolutely could not be here on the 12th.

MR. MANSOLILLO: That is the case.

THE COURT: You'll have to work that out with Mr. Allee.

MR. MANSOLILLO: I understand.

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1 THE COURT: Sometimes people make mistakes. My view
2 is that life is long and you got to cut people a little slack
3 from time to time. Just like I cut you slack on this
4 ridiculous correspondence that you sent me. I'm cutting you
5 slack. I didn't throw it in the garbage. That would not be
6 cutting you slack. You made a mistake. That's fine. Don't
7 make it again. If Mr. Allee made a mistake in not informing
8 the Court about your availability that is a mistake he should
9 not make again.

10 Mr. Allee, don't worry about it, I bet you're going to
11 tell me that you didn't know he was not available on September
12 12th.

13 MR. ALLEE: That's right, your Honor.

14 MR. MANSOLILLO: I have the e-mails if you want to see
15 them.

16 THE COURT: I don't want to see them. Bygones be
17 bygones. You're here now. I should point out that when I had
18 that last conference, no appearance had been entered formally
19 on behalf of Mr. Lustyik. There's nothing wrong with that.
20 But no appearance had been entered. So even though I had been
21 told that you represented him in Utah, you hadn't filed an
22 appearance. What was the date of the motion for *pro hac vice*
23 admission?

24 THE COURTROOM DEPUTY: September 4th.

25 THE COURT: I ruled on it that day. And I immediately

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1 signed it and you were therefore appearing. You're welcome to
2 be here and as I said at the beginning, nice to meet you, and
3 I'm sure we're going to have a long and productive
4 relationship. But when we had this conference back in August,
5 I had heard about you, but there was no formal appearance, so I
6 had no obligation to do anything with respect to you or your
7 client. I wanted to do what I thought was reasonable under the
8 circumstances which is to adjourn the matter for a couple of
9 weeks but not much longer than that because after all you got
10 other defendants in this case as well who were here and who did
11 have counsel. And I did that only after hearing in open court
12 from Mr. Allee that he thought Mr. Lustyik would be here and
13 therefore be ready to be arraigned sometime during the first
14 week of September. So to cut everybody a little slack I said
15 you know, let's make it the second week of September. That
16 takes care of that.

17 I don't want to hear this kind of stuff. I want
18 lawyers to get along. If you got motions you want to make,
19 make a motion. If you want to seek some kind of relief,
20 extension of time, adjournment, whatever it might be, an
21 informal letter motion kind of thing -- p.s., the court's
22 internal rules have just recently changed. Prior to September
23 1st if you wanted to make an informal letter request for
24 something like an adjournment, you were precluded from filing
25 that on ECF. If you tried to do it it would be rejected. The

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rule changed. Now you're required to file it on ECF. That's what my individual practice is. I almost had to revise my individual practices, and there's a draft sitting on my desk, but within the next couple of days they'll be revised. Bottom line is if you need to make a request for something --

MR. MANSOLILLO: Understood, your Honor.

THE COURT: -- you file it on ECF. That applies to you, Mr. Allee. The compensation is if it's confidential information that's being supplied or there's a need or a request that the letter be filed under seal, that's different. That shouldn't be on the public record. But the Court of Appeals has given us a pep talk here in the district court and said: You know what, we don't really like this letter practice where they're not on ECF because when cases come up on appeal, we're missing big chunks of the record. So the impetus for this is coming from the Circuit. And that's fine. I think it's a more efficient way to do that. Are we clear on that?

MR. MANSOLILLO: Yes.

THE COURT: I don't want to discuss problems you've been had with Mr. Allee any further now. As far as I'm concerned, everybody starts with a clean slate. I certainly don't want to hear about problems that you've had with the AUSAs in Utah. What does that mean to me?

MR. MANSOLILLO: This case is run by DOJ, not by the assistant United States Attorneys.

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1 THE COURT: Fine. It's reasonable for me to conclude
2 that at least in my courtroom Mr. Allee is taking a substantive
3 role. Since he's the only one who has spoken, I made a lame
4 joke about that earlier, I welcomed Ms Woods to speak if she
5 wants to add anything or clarify. But it's clear to me
6 Mr. Allee has taken a substantive role. This may be a Southern
7 District thing but those of us who practice things in the
8 Southern District, realize that Southern District AUSAs rarely
9 take a back seat to main Justice. They're more than happy to
10 work with them. They tend to take the lead role. That's just
11 the tradition and practice in this courthouse.

12 What else do we have to deal with before we set some
13 dates? We have been here over an hour.

14 MR. MANSOLILLO: Just for the record, any detention
15 issues I'd like to waive without prejudice to my client.

16 THE COURT: Absolutely. I was going to ask you about
17 that. Again, my access to information is a little bit limited
18 here. I know that originally Mr. Lustyik was arrested here
19 locally I guess in Westchester County which is where he lives
20 in connection with the Utah case. Bail was set by Judge Maas
21 in the Southern District in Manhattan. And he was released on
22 bail and traveled to Utah for whatever purposes he needed to be
23 there. But at some point there was an application made to
24 revoke his bail I guess for two reasons.

25 One is that he hasn't fully secured it. That's not

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1 happening in my courtroom. You just heard what I said about
2 the co-defendant's bail. That has to be fully secured before
3 he gets released, not after he gets released. That was one of
4 the allegations as far as I can tell looking at Pacer. And
5 another one was that your client was inappropriately
6 communicating with witnesses, maybe even paying money to
7 witnesses. There was some kind of a hearing or something that
8 happened in Utah in front of a magistrate judge and the upshot
9 of it is that your client's bail was revoked. I think
10 somewhere that you appealed that to the district judge and it
11 was upheld.

12 MR. MANSOLILLO: Within one month it was appealed to
13 the district court judge. It was upheld and we're seeking
14 review again.

15 THE COURT: You have an absolute right to do that.
16 What you're telling me is that you're not going to seek bail at
17 this time but without prejudice to doing so in the future.

18 MR. MANSOLILLO: That's correct.

19 THE COURT: That's absolutely your right. You might
20 write me a letter saying you were able to prevail in, what is
21 it, the Tenth Circuit?

22 MR. MANSOLILLO: Yes, your Honor.

23 THE COURT: And now we're ready to make an application
24 for bail here in the Southern District of New York and here's
25 the basis of it and so forth. That's the kind of thing you

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1 might write me a letter about at the appropriate time and I
2 will schedule that as soon as I can. I hope you gleaned from
3 the way I dealt with the co-defendant's application, I prefer
4 for defendants to be out on bail. Can't do that in every case.
5 In many cases you can't do that. If I can I will. But it's a
6 moot point because he's already incarcerated in Utah.

7 The record should reflect that the defendant is
8 detained in this district because I would assume that the
9 government would want to file some kind of detainer or
10 something in connection with Mr. Lustyik's Utah case, so in the
11 event he's released there, he would still be held in custody
12 pending a bail review here. So you'll do whatever you have to
13 do. But as far as I'm concerned, the Court's ruling on bail
14 for Mr. Lustyik is detention pending trial, completely subject
15 to review at a later date without prejudice to you.

16 MR. MANSOLILLO: Thank you, your Honor.

17 THE COURT: And I'll do it on short notice. I'll do
18 it as quickly as 24 hours, 48 hours. Very quickly we can get
19 to that if it becomes relevant. It's not relevant right now.

20 MR. MANSOLILLO: That's why I asked. I do have one
21 other matter. I don't know if you can address it without the
22 judge in Utah. As you know, the case is very complex. There's
23 close to two million documents that have been given to us.

24 THE COURT: In which case?

25 MR. MANSOLILLO: In Utah.

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1 THE COURT: I don't know that. How would I know that?
2 I don't talk to the judge. Do I need to talk to her for some
3 reason?

4 MR. MANSOLILLO: Let me get to the point. The point
5 is he's being transferred and it's fine that he's here, his
6 family is here, can see him, I'm from Boston.

7 THE COURT: Gee, I never would have realized that.
8 I'm kidding. It's your accent, obviously New England.

9 MR. MANSOLILLO: Pending any requirements, and I think
10 the judge will waive most of them in Utah, and I intend to ask
11 her, that he be at the hearings, I ask that this Court hold him
12 here in Valhalla if that's possible. Otherwise, he's going to
13 be traveling. I have a trial to prepare for, a huge trial
14 which now looks like it will be sometime in March.

15 THE COURT: Where is that?

16 MR. MANSOLILLO: In Utah.

17 THE COURT: In this case?

18 MR. MANSOLILLO: In this case.

19 THE COURT: I see what you're saying. You're located
20 more or less in the east coast.

21 MR. MANSOLILLO: Yes. And he's from New York. He's
22 from down the street.

23 THE COURT: But he's in custody so he can be in
24 custody anywhere but you're located here.

25 MR. MANSOLILLO: It's easy for me to travel from

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1 Boston back and forth. However, when he travels, they just
2 don't put him on a plane and he shows up in Utah.

3 THE COURT: No. He has to go through Oklahoma City or
4 Atlanta.

5 MR. MANSOLILLO: Seven transfers to get here. Maybe
6 if I can coordinate between Judge Campbell and yourself where
7 he can be held. There may be other hearings, he's going to be
8 here. If he's in Valhalla he's here. Unless there's a stay
9 until after the Utah case is done, then that's fine if he goes
10 back.

11 THE COURT: I'll hear from Mr. Allee or Ms Woods,
12 since the common denominator is that it's Ms Woods' division in
13 main Justice that's also involved in the Utah case?

14 MR. MANSOLILLO: Yes.

15 THE COURT: Although not Ms Woods herself?

16 MR. MANSOLILLO: Not Ms Woods herself.

17 THE COURT: One of her colleagues from that, I think
18 that's what I was talking about

19 MR. MANSOLILLO: That's correct. It's all one unit,
20 Public Integrity Unit.

21 THE COURT: When is the next court appearance in Utah?

22 MR. MANSOLILLO: October 15th. And those are
23 suppression motions that will have a bearing on this case here.

24 THE COURT: If Mr. Lustyik were to stay here, which I
25 understand is your preference, I not ruling on this at this

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1 point, how does he handle that, how does he appear in court in
2 Utah if he's here in Valhalla?

3 MR. MANSOLILLO: I going to ask that the judge in Utah
4 waive his appearance for that.

5 THE COURT: For that hearing?

6 MR. MANSOLILLO: For those hearings.

7 THE COURT: I think you need to not ask me to order
8 him to stay here when he's here presumably on a writ from Utah.

9 In other words, Mr. Allee can speak to this, didn't
10 you submit a writ to Judge Smith to have him brought here?

11 MR. ALLEE: Yes, your Honor.

12 THE COURT: Normally, once the purpose for which he's
13 brought here is completed, he would be returned to the other
14 court.

15 MR. ALLEE: Yes, your Honor.

16 THE COURT: I perfectly happy for him to stay here. I
17 reluctant to order it especially if the judge in Utah wants him
18 back in Utah. What I getting at is I think you need to write a
19 letter to both of us, to the judge in Utah and to me, write one
20 letter, explain everything you want to explain, and it seems to
21 me -- what's the name of the judge in Utah?

22 MR. MANSOLILLO: Judge Tina Campbell.

23 THE COURT: And then it would probably be appropriate
24 for me to communicate with Judge Campbell and figure out what
25 the best thing to do is. I not going to do anything that's

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1 going to be perceived as ordering her to do anything. Her
2 commission and my commission are exactly the same. I can't do
3 that. Mr. Allee, what were you going to say?

4 MR. ALLEE: He can't be in both places at once. He's
5 here on a writ. I think it depends on the schedule that we set
6 out what will make sense as far as just where Mr. Lustyik is
7 housed. It's ultimately the responsibility of the marshals, if
8 he's in federal custody, to insure that he appears in court
9 when he's required to do so.

10 THE COURT: Let's assume that he waives his
11 appearance. He's not going to waive his appearance at trial in
12 Utah.

13 MR. MANSOLILLO: Of course not.

14 THE COURT: Waiving his appearance for a pretrial
15 hearing, if I were a defendant, I would not really want to do,
16 because it's my case and not Mr. Mansolillo's case. But I
17 think he probably could do that under the circumstances that
18 are present here, waive his appearance assuming that was
19 permitted by Judge Campbell in Utah. Let's assume he waives
20 his appearance for pretrial matters in Utah and Judge Campbell
21 agrees with that, and also taking into account the fact that
22 this is Mr. Lustyik's home, he is from here, his friends and
23 family are presumably in this area, his attorney, broadly
24 speaking, is from this area, which means it would facilitate
25 communication between Mr. Lustyik and his attorney not only for

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1 this case but also for the Utah case if Mr. Lustyik remained
2 here in the Southern District. It's not crazy what
3 Mr. Mansolillo is asking in. I just not going to order it. I
4 am just curious as to your position.

5 MR. ALLEE: Our view is that again it's up to the
6 marshals to insure that he's produced for court.

7 THE COURT: If he waives his right to be produced in
8 court, let's assume that, I don't want to go to Utah he says,
9 I'd like to stay here until the trial, he's got to be specific,
10 assuming that's the case, what reason would there be for him to
11 be sent back to Utah now?

12 MR. ALLEE: I am not opposed to that. I don't have
13 really a position on where he's housed other than he should be
14 where he can be produced. If he's not needed in Utah and can
15 stay here, and particularly if we can set a schedule where
16 while he's here, he can appear in the intervening time, that's
17 fine with the government, provided that it doesn't conflict
18 with any proceedings in Utah. October 15th I'm told that
19 that's a date to reserve for counsel in that case for pending
20 motions. Following that, I told that there's not a trial date
21 yet in that case although I hear today that it will probably be
22 in March and that seems possible based on what I've heard.

23 We have asked for the protective order which I
24 understand your Honor --

25 THE COURT: I already signed it.

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1 MR. ALLEE: -- will be in a position to sign today.
2 We have discovery here on this table that I would give to
3 counsel today.

4 THE COURT: Let me ask you if you know the answer to
5 this question and maybe if you don't the marshals can let me
6 know. If I don't enter any kind of order and do nothing other
7 than to say that it's my preference that he remain here if
8 that's okay with Judge Campbell, I guess that's an accurate way
9 of putting it, would the marshals send him back anyway and say
10 well he's here, he got here for the arraignment, now we have to
11 send him back to Utah? Do I have to tell the marshals to do
12 something or not to something? I would appreciate it if the
13 marshals do nothing until we sort this out. It's not an order,
14 it's sort of a respectful request.

15 MR. ALLEE: He's here on a writ. To return a
16 defendant from where they've been brought by a writ requires my
17 office to satisfy that writ. In my letter to you and to Judge
18 Campbell in August, I represented that in substance this was a
19 window of time where we understood Mr. Lustyik was not needed
20 in Utah. We obtained a writ. And that we intended to satisfy
21 the writ and return it so he wouldn't miss anything, so it
22 wouldn't interfere in Utah. Today, once we have a schedule,
23 once we know what the next court dates are, that would dictate
24 whether I would follow that process or ask you to change it.
25 So if you schedule a date for us to come back to schedule

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1 motions, there is a potential *Curcio* issue I want to mention
2 which may require a further court appearance here, if there's a
3 court appearance coming up I would ask you if we could change
4 that, not satisfy the writ, and I could talk to the marshals
5 about insuring that he's not returned contrary to your wishes.

6 THE COURT: My respectful request to the marshals.

7 MR. MANSOLILLO: I was a former assistant United
8 States attorney, I was a former DEA agent who retired out of
9 this district. The marshals talk directly to the prosecutors,
10 they don't talk to defense, and they haven't talked to us once.
11 They've moved him all over the place without telling the judge
12 or the defense where they are.

13 THE COURT: That's done for security reasons. That's
14 perfectly acceptable. They don't tell people in advance where
15 they're moving him.

16 MR. MANSOLILLO: I don't even know when he's going to
17 be moved. We were told he wasn't going to be taken from Utah
18 and we have a transcript to that effect. And a marshal
19 actually stood up in front of Judge Campbell and said that. I
20 just ask, if those are your wishes, I think they'll abide by
21 them.

22 THE COURT: My wish is, it would serve this Court's
23 interest if Mr. Lustyk remained here at least long enough for
24 the lawyers in this case to have an opportunity to review the
25 discovery materials, not complete and total every line of the

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1 discovery materials, but a basic review of discovery materials
2 sufficient to come back and see me again and tell me what kind
3 of motions if any they expect to file, at which point we would
4 then schedule a motion, we would then set a motion schedule,
5 not today, but after you've had an opportunity to review
6 discovery.

7 MR. MANSOLILLO: I understand.

8 THE COURT: So what I thinking is, I was going to say
9 30 days, maybe it's more appropriate to say 60 days, but that
10 would only work if Mr. Lustyik waives his appearance in October
11 or the October date doesn't actually happen for some reason and
12 Judge Campbell is okay with that. So I not ordering anything.
13 I not ordering the marshals to do anything. If I were to set a
14 date 60 days out for another conference, what would you do *vis*
15 *a vis* the writ, Mr. Allee? Is that too far out for you? You
16 tell me.

17 MR. ALLEE: First your Honor, we'd ask for 30 days to
18 make that window as soon as possible but long enough so they
19 can review discovery which 30 days would suffice. I would ask
20 your Honor for permission not to satisfy the writ so we can
21 come back on that date.

22 THE COURT: You'd like a shorter date rather than a
23 longer date.

24 MR. ALLEE: We're ready to hand over the discovery.
25 It's four disks. A big portion of the proof in this case is

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1 text messages and e-mails with which Lustyik is very familiar
2 from discovery in the other matter and they take up a lot of
3 the pagination of the discovery. There are several other types
4 of records, bank records, credit reports that certainly require
5 review. But as the indictment makes clear, an important piece
6 of proof here is those texts and e-mails and we think they can
7 be reviewed in 30 days so we can get a motion schedule at that
8 point.

9 THE COURT: You also told me the last time there was a
10 search warrant of Mr. Thaler's home, search warrant of
11 Mr. Lustyik's office, maybe Mr. Ahmed's home phone also. Yes.
12 He provided his computer and phone on consent?

13 MR. ALLEE: Yes, your Honor. And so the search
14 warrant materials themselves are part of the discovery and then
15 the evidence they yielded which is partly the texts, partly
16 documents obtained from Lustyik's pod, his office at the White
17 Plains resident agencies of the FBI, from his home, from
18 Thaler's home pursuant to the search warrant. There were some
19 items obtained from Mr. Ahmed, and those were on consent. Some
20 of those I referenced today, the iPhone. There are a few
21 pending items of discovery that are not in this redwell that I
22 brought here that I can report on. I brought them up at the
23 last conference. One is the iPhone. We've completed what
24 technicians called a forensic analysis of iPhone. We've got a
25 report that we can produce very soon, probably by the end of

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1 the week. We've got Mr. Ahmed's computer which we're still
2 conducting that examination. We expect to have a report of the
3 results within two weeks. We're prepared to produce those
4 reports which are very useful summaries, they're in some way
5 work products but they fill in the discovery. The items will
6 be available themselves if counsel wants the items. There's
7 also a computer of Mr. Thaler's that has been recovered. Same
8 thing, we can make a copy of the computer itself if we're
9 provided the hardware to do it and we can do that now. We're
10 reviewing it for items that are relevant to our case, that's
11 still pending that's not in this batch of discovery that I have
12 here, we can get that out within a few weeks. And the same
13 goes for the FBI e-mail account of Lustyik. We're also
14 reviewing that for the search terms for relevant items. We
15 will produce the results of that to counsel and we think we can
16 do that in a few weeks.

17 THE COURT: You also told me the last time that
18 discovery might involve classified documents which would
19 require security clearances for attorneys. You haven't
20 mentioned that today.

21 MR. ALLEE: We're in the same posture we were on the
22 28th, which is it's still possible. If that's the case,
23 there's a process for such items under the CIPA statute which
24 you may know. But we're not in a position yet where it
25 necessarily involves such documents. We're working on it.

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1 THE COURT: I willing to put the case over for 30 days
2 with the expectation that counsel will make every effort that
3 they can to review the discovery but with the understanding
4 that sometimes it takes a lot longer than that to review
5 discovery depending on how voluminous it is. But I think it's
6 better to have a shorter date than a longer date. Even 30 days
7 puts us after the October 15th date that you told me about in
8 Utah.

9 So it seems to me Mr. Mansolillo you still got to
10 write a letter explaining the situation. I don't want to be
11 perceived by anybody as somehow interfering in any way, shape
12 or form with a case that's in another district, particularly
13 when it's already a year old. I'll give you a date but that's
14 not the same as saying I'm ordering anybody to keep him here.
15 I just going to give you another date. I think it behooves you
16 and Mr. Allee and whoever else you need to talk to do sort out
17 what makes the most sense.

18 Let me say this, it's not unreasonable to me that he
19 be held here for all the reasons we talked about so long as he
20 waives any appearances that he would otherwise have to make in
21 Utah. If he doesn't waive his appearance, then as far as I
22 concerned, off he goes.

23 MR. MANSOLILLO: I intend do that. I will cc you a
24 copy either electronically or via letter.

25 THE COURT: If I were you I would write a letter to

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1 Judge Campbell and a copy to me or write it to both of us and
2 explain that you want to do. We'll give you a date 30 days
3 from now to come back and see me.

4 Before I set that date though, you said there was a
5 *Curcio* issue, with who? Mr. Mansolillo or someone else?

6 MR. ALLEE: Mr. Mansolillo.

7 THE COURT: Is it definitely an issue or something
8 you're not sure of yet?

9 MR. ALLEE: It's a potentially waivable conflict.
10 It's not an actual conflict as we see it. These are things
11 that need to be raised right away. So I would ask to set some
12 kind of schedule to come back on it.

13 The issue arises out of the following circumstance.
14 Mr. Mansolillo as I understand it, is also counsel for Lustyik
15 in Utah and Thaler, a defendant in this case, who is also a
16 defendant in Utah, does not have Jason Ser in Utah, he has
17 another lawyer, Daniel Calabro, and Mr. Mansolillo and
18 Mr. Calabro are partners at a law firm. My understanding is
19 that circumstance in Utah prompted a *Curcio* proceeding out
20 there where Mr. Lustyik and Mr. Thaler on inquiry, the sort of
21 *Curcio* type inquiry from the court, were found to have
22 knowingly waived those potential conflicts and then the
23 representation remained the same.

24 Some of that conflict is, or the potential conflict is
25 inherited here because of the partnership. So the government's

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view is that the Court should satisfy itself, if Lustyik seeks to waive that here, that Lustyik understands that Mr. Mansolillo has a potential duty of loyalty to the client of his partner.

THE COURT: That's his client. Partners, if Mr. Mansolillo has a partner who is representing Mr. Thaler, albeit in a different matter, but nonetheless Mr. Thaler, then effectively Mr. Mansolillo is representing Mr. Thaler. So yes, I would say the same sort of *Curcio*, although it's one step removed I suppose because Mr. Thaler also has Mr. Ser as his lawyer. But I would agree that there's a potential conflict of interest.

MR. ALLEE: That goes for Mr. Thaler. The issue here is that the Court should satisfy itself that in the event Lustyik seeks to waive that, that he does so knowingly, that he understands Mr. Mansolillo has a duty of loyalty to a co-defendant and possibly Mr. Mansolillo has privileged information arising from the co-defendant that he cannot use.

THE COURT: The same questions have to be put to Mr. Thaler.

MR. ALLEE: We see it as slightly different. Mr. Ser, there's no conflict, there's no loyalty to any co-defendant or any witness. However, there are ethical rules about continuing loyalty. And so to the extent that Mr. Mansolillo has a continuing duty of loyalty to Thaler, potentially under New

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1 York ethical rules Thaler would then have to waive that duty of
2 loyalty or that conflict for Mansolillo to continue to
3 represent Lustyik. That doesn't go to a constitutional
4 conflict, that has to do with Lustyik's representation in this
5 case. It's also something I expect could be waived. I don't
6 say there's any ethical quandary that can't be solved. But the
7 Court should address these promptly.

8 We're here. Mr. Mansolillo has pointed out he wants
9 him to stay here. We ask that we address that as soon as
10 possible. We do in these cases make a submission where we
11 propose questions the Court can allocute the defendant on.

12 THE COURT: I think we do have to address it. Do you
13 agree with that, Mr. Mansolillo?

14 MR. MANSOLILLO: I think facts have changed that
15 Mr. Allee is not aware of. That partnership has been
16 dissolved.

17 THE COURT: I don't really think it matters. Even as
18 a former partner, effectively you represented Mr. Thaler, even
19 if you never even spoke to Mr. Thaler, through your partner you
20 represented Mr. Thaler. And the problem that Mr. Lustyik has
21 or potential problem that Mr. Lustyik has is he would have to
22 waive or he'd have to knowingly waive a potential conflict like
23 Mr. Allee said. For example, he would have to be advised
24 clearly that to the extent you were in possession of any
25 confidential information regarding Mr. Thaler that could be

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1 helpful to Mr. Lustyik, that you would be precluded from using
2 that, even though you were no longer a partner with your former
3 partner. That's the kind of thing I'm talking about.

4 MR. MANSOLILLO: Okay.

5 THE COURT: It does sound like a waivable conflict.

6 MR. MANSOLILLO: We did waive it, we'll waive it again
7 before this Court.

8 THE COURT: We won't do that right now. The
9 government will provide me with a letter explaining a little
10 bit more detail what Mr. Allee just put on the record with a
11 proposed set of questions, obviously, you get a copy of this as
12 well, with a proposed set of questions for me to ask
13 Mr. Lustyik and also Mr. Thaler. Because I agree it's a
14 different situation. But it is kind of a mirror image. It's
15 just that the difference is here in this court, Mr. Thaler has
16 a lawyer who has no connection whatsoever to Mr. Mansolillo's
17 law firm. So he already has independent counsel who can advise
18 him about any potential conflicts that might exist.

19 Mr. Lustyik, however, does not have an independent
20 lawyer who could advise him about any potential conflicts. And
21 ordinarily in this court I would assign a CJA attorney solely
22 for the purposes of advising Mr. Lustyik on any potential
23 conflicts and the issues that are related to his knowing and
24 intelligent and voluntary waiver of any conflict. I'm
25 reluctant to do that now because I haven't received anything

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from the government yet formally. If I got something from you formally, especially if I got it quickly, I could go ahead and appoint someone from the CJA counsel to represent Mr. Lustyik for this narrow purpose. Would you agree with me that I should appoint someone from the CJA counsel as an independent lawyer to advise Mr. Lustyik?

MR. ALLEE: Yes.

THE COURT: I won't do that until I get your letter.

MR. ALLEE: We can put in a letter tomorrow.

THE COURT: Why don't we do this. You give me that letter. I'll give you a date to come back in mid-October. And before that time, when I get your letter, I'll arrange to have a letter off the CJA Panel. Do we know who's on duty tomorrow? Doesn't matter. Whoever it is it is. I'll arrange to have an attorney appointed to represent Mr. Lustyik for this limited purpose.

It's Joseph Vita. I assume he doesn't have any connection with this case. Not James DeVita, who was Mr. Ahmed's attorney, this is a different Vita, Joseph Vita.

MR. ALLEE: We're not aware of any conflict.

THE COURT: I assume that's what you're were asking about, Ms Woods.

MS WOODS: Yes, your Honor.

THE COURT: Okay, different person. It's okay; it's a reasonable question. So we can have that Curcio hearing on

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1 that adjourned date. Or do you want to do it sooner than 30
2 days? We could give an interim date just -- except it has to
3 involve Mr. Thaler too, not just Mr. Lustyik. It involves both
4 of them.

5 MR. ALLEE: 30 days or within 30 days.

6 THE COURT: Let's give you 30 days and then everybody
7 can come back and we can talk about scheduling and other things
8 as well. I have a trial which I'm pretty certain is going to
9 go forward the week of the 15th. So really it's difficult for
10 me to carve out a big chunk of time and I think we need to
11 carve out at least an hour. We've been here for two hours
12 today. How about October 24th, two o'clock in the afternoon.

13 MR. MANSOLILLO: That's fine.

14 MR. SER: That works, your Honor.

15 THE COURT: Thank you. Mr. Ser, you've been very
16 quiet over there.

17 MR. SER: That's fine, your Honor.

18 MR. HENRY: The 24th at two is fine, your Honor.

19 THE COURT: How about the government table?

20 MS WOODS: That works for the government, your Honor.

21 THE COURT: We'll put that matter over until October
22 24th at two p.m. In the meantime, the government is going to
23 produce whatever discovery it has, I'm not going to set any
24 precise deadline for them to do this, I have great confidence
25 in Mr. Allee's professionalism in that regard. In other words,

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1 he's going to give you what he has to give you and he's going
2 to do it promptly but it has to be by definition on a bit of a
3 rolling basis. I'm sure, Mr. Allee, you will commit to me to
4 produce things as promptly as they're available to produce,
5 including some things that you have today that you can provide.

6 MR. ALLEE: Yes, your Honor.

7 THE COURT: On October 24th, I recognize this might be
8 a bit of a shorter adjournment than would ordinarily apply in a
9 case like this, but I would like to think that all counsel
10 would have had at least a reasonable opportunity to review the
11 materials that have been produced. And I would like on October
12 24th to hear from counsel as to what sorts of motions they
13 think they might want to make, if any. You're not required to
14 make motions. But if you want to make them, it would be nice
15 to know what they are. Including whether counsel think there's
16 a need for hearing, some sort of evidentiary hearing,
17 suppression hearing, that kind of thing. I know there are
18 search warrants involved here. Sometimes there's a need for a
19 suppression hearing. So hopefully you can all do that and I
20 hope I'm not putting too much pressure on you. Let's try to do
21 that so when you come back on the 24th of October you can tell
22 me what you think you're likely going to have to do in terms of
23 motions and whether you're going to do it.

24 And I recognize that there is another case pending for
25 two of these defendants, a serious matter in another district.

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1 There's nothing I can do about that other than try to be as
2 reasonable as possible which is what I'm trying to do. Does
3 that work for everybody?

4 MR. MANSOLILLO: One question, your Honor. Is it
5 possible that we can set up -- I'm pretty certain, being very
6 familiar with this case, that there's going to be classified
7 information, and it's going to involve CIPA -- is it possible
8 we can set up a discovery schedule for classified and
9 nonclassified? That's what we have done in the Utah case.

10 THE COURT: The government is going to produce
11 nonclassified materials today. And if there's other materials
12 like the forensic report, that's all nonclassified. There's no
13 CIPA problem there, that doesn't implicate CIPA.

14 MR. ALLEE: Right.

15 THE COURT: You haven't even told me whether there is
16 anything that implicates CIPA?

17 MR. ALLEE: There may be and there may not be.

18 THE COURT: I think we have to wait and see.

19 MR. MANSOLILLO: Okay, your Honor.

20 THE COURT: It may be a moot point. I have been
21 through this in other cases where the government tells me it
22 may be a CIPA case, we may have to do this and we may have to
23 do that, and in the end, it's not, and a lot of time and energy
24 is required dealing with CIPA when it doesn't require any
25 security clearances. Right now I have two defendants sitting

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1 in jail and I recognize there's another case pending in Utah.
2 But thank you for raising it. We'll deal with it if and when
3 we have do. Anything else today?

4 MR. HENRY: May I go ahead and turn in the Pretrial
5 Services report and turn in the passport to the Pretrial
6 Services officer?

7 THE COURT: You don't have to do that, but on the
8 record I'm going to assume you're going to do that.

9 Mr. Ser, is there anything you want me to deal with
10 today?

11 MR. SER: No, your Honor.

12 THE COURT: Do you agree with me that your client has
13 a sort of mirror image *Curcio* issue, because your client has
14 been represented by Mr. Mansolillo's partner which means
15 Mr. Mansolillo represents your client?

16 MR. SER: I do, your Honor.

17 THE COURT: But I don't think I need to appoint
18 independent counsel because you're already independent counsel.
19 You can advise him as to what the issues are. But I think I
20 have to allocute your client as well. I can revise or add to
21 what the government provides, and you can as well.

22 Mr. Mansolillo, if there's anything you think I should
23 be adding or subtracting from the government's *Curcio* letter,
24 you should tell me that. My experience is they're pretty
25 comprehensive.

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1 MR. MANSOLILLO: I have been through it three times,
2 your Honor.

3 THE COURT: All right. I appreciate that. Anything
4 further?

5 MR. MANSOLILLO: No. Just to add, there will be
6 classified information coming from the defense.

7 THE COURT: Coming from the defense?

8 MR. MANSOLILLO: Yes.

9 THE COURT: Your client doesn't work for the FBI any
10 more, right?

11 MR. MANSOLILLO: That's correct.

12 THE COURT: I'm not sure what you're saying, that he's
13 in possession of classified information?

14 MR. MANSOLILLO: The DOJ has taken a separate position
15 saying that that information is the government's and not his
16 and he can't talk to his defense attorney until there's a
17 ruling on that.

18 THE COURT: In my case or in the Utah case?

19 MR. MANSOLILLO: In the Utah case.

20 THE COURT: Don't ask me to get involved in the Utah
21 case any more than I absolutely have to.

22 MR. MANSOLILLO: I'm not. It's just the same issue.
23 And Section 5 of CIPA is what the defense intends to present as
24 part of their defense and I intend to present some of that
25 information. So it's going to invoke CIPA.

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1 THE COURT: We will deal with it when we have to. We
2 don't have to deal with it right now.

3 Anything else Mr. Allee, other than an application for
4 a speedy trial exclusion?

5 MR. ALLEE: Just one moment, your Honor.

6 (Pause)

7 MR. ALLEE: Just a couple of things, your Honor.

8 First, when we come back on the 24th, that's also for
9 the *Curcio*?

10 THE COURT: Yes, it is.

11 MR. ALLEE: I am still in the position of having
12 represented both to your Honor and to Judge Campbell that we
13 would satisfy the writ after having completed the arraignment
14 and conference, but now I'm not going to do that with your
15 authority. I would like to clarify that to the judge in Utah.

16 THE COURT: Don't tell the judge in Utah that I
17 ordered Mr. Lustyik to stay here.

18 MR. ALLEE: You've not done that. This is all
19 triggered by the waiver of a potential appearance on October
20 15th by Lustyik. What I don't want is just to be stuck not
21 doing what I said I'd do, which is send him back.

22 THE COURT: You should write a letter to Judge
23 Campbell.

24 MR. ALLEE: I think I will do that just sort of
25 describing this circumstance. And then, having done that, I

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1 will not satisfy the writ, I'll speak to the marshals about
2 that. If I hear from Judge Campbell that that's not acceptable
3 to her, then I'll get back to your Honor.

4 Before I get to speedy trial, what Mr. Mansolillo just
5 said I don't fully understand about the defense using or
6 producing or having something to do with classified documents.
7 But I am concerned about that. And I think I would just ask
8 that when we return, there is a Rule 16 procedure for defense
9 discovery, if the defense intends to put on a case, if there
10 are classified documents or items that the defense anticipates
11 putting on, I'd ask for some notice about that and I'd like to
12 be able to address it at the next conference.

13 THE COURT: Obviously you should get notice but I
14 think what he was saying is even though there are documents
15 that are being produced in the Utah case, that those documents
16 are subject to CIPA and he may want to use them in this case
17 which arguably implicates CIPA. I don't pretend to be an
18 expert in this area. I'm generally aware of it. I don't know
19 what his obligations are, or yours for that matter.

20 MR. ALLEE: If there's something for the defense that
21 they would otherwise want to produce but they're prevented from
22 doing so, I would want to know that so we can deal with it
23 rather than just sit on it.

24 THE COURT: Why don't you try to clarify that among
25 yourselves. Notwithstanding any bad blood that may be out

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1 there, I'm directing both of you to act like grown-ups. Is
2 that a specific enough order?

3 MR. MANSOLILLO: Yes, your Honor.

4 MR. ALLEE: We'd ask that you exclude time in the
5 interest of justice in this case until October 24th. We ask
6 that you do that for, among other reasons, the defense can get
7 the discovery we're producing today, and forthcoming
8 productions, so they can determine whether they want to make
9 any motions, and what kind of motions to make, and it would
10 also allow the government to submit the *Curcio* submission, for
11 the defense to review that and consider whether to respond.

12 THE COURT: And also the need to appoint independent
13 counsel for Mr. Lustyk to deal with the *Curcio*. He'll need
14 some time for that as well.

15 MR. ALLEE: Yes, your Honor.

16 THE COURT: Any objection?

17 MR. MANSOLILLO: At this point I'm fine for October
18 24th, we'll go with the *Curcio* hearing, I've done that three
19 times. I'll bring all my materials from there, and if they
20 want the transcripts, I'll bring those as well.

21 THE COURT: But you're not objecting to an exclusion
22 under the Speedy Trial Act stopping the clock in effect?

23 MR. MANSOLILLO: No. It would be unreasonable to do
24 that at this time knowing that Utah is going to come first.

25 THE COURT: Anything else?

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1 MR. SER: No, your Honor.

2 MR. HENRY: No objection.

3 THE COURT: Okay. The Court excludes time under the
4 Speedy Trial Act from today through and including October 24,
5 2013. I find the ends of justice served by granting the
6 requested continuance outweigh the best interests of the public
7 and the defendants in a speedy trial for the reasons stated by
8 Mr. Allee on the record. Thank you all very much and I'll see
9 you all on October 24th.

10 THE COURTROOM DEPUTY: Thank you very much; this Court
11 will be in recess.

12 (Proceedings adjourned)

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